



I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed: January 25, 2010

/s/ Mario Aieta

MARIO AIETA

# **EXHIBIT A**

VIDEOTAPED DEPOSITION OF JAMES M. CANGIANO - VOLUME 1  
CONDUCTED ON TUESDAY, DECEMBER 15, 2009

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 CASE NO. 07-CV-11387 (JUDGE COLS)

4 SECURITIES AND EXCHANGE COMMISSION

5 Plaintiff,

6 vs.

7 BRIAN N. LINES, et al.,

8 Defendants.

9 -----X

10  
11  
12 VOLUME I

13 VIDEOTAPED DEPOSITION OF JAMES M. CANGIANO

14 200 South Biscayne Boulevard

15 Suite 3900

16 Miami, Florida

17 Tuesday, December 15, 2009

18 9:15 a.m.

19  
20  
21  
22  
23 Job #169836

24 Pages 1-297

25 Reported By: Carol Williams

A P P E A R A N C E S

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VIDEOTAPED DEPOSITION OF JAMES M. CANGIANO - VOLUME 1  
CONDUCTED ON TUESDAY, DECEMBER 15, 2009

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For the Defendant Brian N. Lines:

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For the LOM Companies:

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JEFFREY HARRIS, ESQUIRE  
DEREK T. HO, ESQUIRE  
Kellogg, Huber, Hansen, Todd, Evans &  
Figel, PLLC  
1615 M Street, N.W., Suite 400  
Washington, D.C. 20036

Also Present: David Marcus

Scott Quinn, Videographer

I N D E X

WITNESS	Direct
James M. Cangiano	
By Mr. Figel	6, 140

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1 THE VIDEOGRAPHER: Here begins  
2 videotape number 1 in the deposition of James  
3 Cangiano in the matter of Securities and  
4 Exchange Commission, plaintiff, versus Brian  
5 N. Lines, et al., defendants in the United  
6 States District Court, Southern District of  
7 New York.

8 Today's date is December 15, 2009. The  
9 time is 9:15 a.m. I am Scott Quinn, the  
10 video operator. The video deposition is  
11 taking place at K&L Gates in Miami, Florida.

12 Would counsel please voice identify  
13 themselves and state whom you represent.

14 MR. CHRETIEN: Justin Chretien on  
15 behalf of plaintiff Securities and Exchange  
16 Commission.

17 MR. FIGEL: Reid Figel, Derek Ho, and  
18 Jeffrey Harris representing the LOM entities.

19 MR. CRIMMINS: Steve Crimmins from K&L  
20 Gates representing Scott Lines.

21 MR. SMITH: Philip Smith from Patton  
22 Boggs representing defendant Brian Lines.

23 MR. BLOOM: Leonard Bloom and William  
24 Nortman from Akerman Senterfitt representing  
25 defendant Anthony Wile.

1 Q. Why not?

2 A. I don't think it was material to my  
3 finding. We knew that there was present -- we  
4 knew that short sellers were present, or at  
5 least, you know, Mr. Peever and Mr. Lines thought  
6 so.

7 Q. Which transaction are we talking about  
8 now?

9 A. Oh, I don't know. There is a whole  
10 bunch of short sale transaction.

11 Q. Are we talking about SHEP or Sedona?

12 A. Oh, I'm sorry. I got -- I got lost  
13 there for a minute. I apologize.

14 Q. Bad question. I want to make sure the  
15 record is clear.

16 A. It's getting to be 4:30. My brain  
17 quits functions at 10 after 4:00. I'm sorry.

18 MR. CHRETIEN: Do you want him to  
19 repeat the question?

20 THE WITNESS: Yeah.

21 Q. Did you do any investigation to  
22 determine whether there was any illegal short  
23 selling in connection with the transactions in  
24 SHEP? And then the next question was, after you  
25 said no, why not?

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1           A.     Okay. And I think I answered it really  
2 wasn't integral to my opinion or something like  
3 that.

4           Q.     And why didn't -- why didn't you  
5 conduct any investigation into the short selling  
6 in Sedona?

7           A.     I just didn't feel it was material in  
8 my opinion. As a matter of fact, on the  
9 contrary. It -- to me, it kind of enforced my  
10 opinion that this, in fact, was a pump and dump.

11          Q.     You didn't think it would be --  
12 withdrawn.

13                 Is it fair to say that short selling  
14 can have the effect of depressing the reported  
15 price of a stock?

16          A.     It can, yes.

17          Q.     And wouldn't it be important to your  
18 opinion to know whether any of the price  
19 movements that you claim existed as a result of  
20 the promotional activities of the defendants in  
21 this case were impacted by the presence of short  
22 selling?

23          A.     Are you talking Sedona, SHEP, or both?

24          Q.     Both.

25          A.     No. As a matter of fact, it would be

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1 exactly the opposite of that. I think the  
2 presence of short sellers fostered my belief that  
3 they were -- as I said, they are pretty smart  
4 people and they know where to hone in and where  
5 they can make some money in these kinds of deals.

6 Q. So the presence of short sellers was a  
7 fact you relied on to support your opinion that  
8 there was what you call a pump and dump?

9 A. I think so, yeah. I think it's an  
10 indication that, in addition to me, some savvy  
11 traders knew what was going on.

12 Q. Do people take short positions for  
13 reasons other than their belief that there is a  
14 pump and dump?

15 A. Sure.

16 Q. What might some of those reasons be?

17 A. They think the stock is going down.  
18 They don't feel that the issuer is going to meet  
19 their earnings. It could be a million different  
20 negative things about the company.

21 Q. So how do you determine, when you see  
22 the presence of short selling, whether the  
23 motivation for the short sellers is their belief  
24 that there is a pump and dump as opposed to some  
25 of the fundamentals about the company or the

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1 market, established the bid and offer,  
2 established both sides of the market, by the way,  
3 as the \$8 bidder and the 9.50 offerer, and that  
4 as a consequence of those quotes, verified by  
5 Wayne Wile's transaction, the \$9.50 offering was  
6 lifted.

7 MR. FIGEL: All right. I think,  
8 unfortunately, we are out of time for today.

9 MR. CHRETIEN: Come back in the  
10 morning.

11 THE VIDEOGRAPHER: Going off the  
12 record. The time is 5:58.

13 (Whereupon, deposition adjourned.)  
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VIDEOTAPED DEPOSITION OF JAMES M. CANGIANO - VOLUME 3  
CONDUCTED ON WEDNESDAY, DECEMBER 16, 2009

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

CASE NO. 07-CV-11387 (JUDGE COLS)

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

vs.

BRIAN N. LINES, et al.,

Defendants.

-----X

VOLUME III

VIDEOTAPED DEPOSITION OF JAMES M. CANGIANO

200 South Biscayne Boulevard

Suite 3900

Miami, Florida

Wednesday, December 16, 2009

8:12 a.m.

Job No.: 169838

Pages 305-567, Volume 3

Reported By:

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VIDEOTAPED DEPOSITION OF JAMES M. CANGIANO - VOLUME 3  
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Also Present: David Marcus

Scott Quinn, Videographer

I N D E X

WITNESS	Direct	Cross	Redirect	Recross
James M. Cangiano				
By Mr. Figel	309		497	
By Mr. Chretien		441		561
By Mr. Aieta		462		
By Mr. Nortman		469		533
By Mr. Smith		484	543	

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240	Addicted to Profits	322
241	Invoices from Wildcat Consulting	342
242	Press release of inside holdings 9/17/02	393
243	Form SK	393
244	SHEP press release 10/7/02	394
245	6-K filing with SEC 10/10/02	394

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1           246       SHEP press release 11/7/02           394

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3                   E X H I B I T     I N D E X

4   Exhibit                   Description                   Page No.

5       247       SHEP press release 12/2/02           394

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11      253       Press release 5/28/03                  395

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15      258       October invoice to SEC                  529

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1 THE VIDEOGRAPHER: We're back on the  
2 record. Today's date is December 16, 2009.  
3 The time is 8:12 a.m. This is a continuation  
4 of deposition of James Cangiano.

5 You may continue, please.

6 THEREUPON:

7 JAMES M. CANGIANO,  
8 was called as a witness and, being first duly  
9 sworn, was examined and testified as follows:

10 DIRECT EXAMINATION (Continuing)

11 BY MR. FIGEL:

12 Q. Good morning, Mr. Cangiano.

13 A. Good morning.

14 Q. Welcome back.

15 A. Thank you.

16 Q. When we were -- when we broke  
17 yesterday, we were talking about some of the  
18 trading that you observed in your report. I  
19 would like to direct your attention back to page  
20 22 of your report. Do you have that in front of  
21 you?

22 A. Certainly.

23 Q. On the third paragraph from the bottom  
24 of page 22, you're talking about what you refer  
25 to as the dump portion of a pump and dump.

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1           A.     I believe the press releases that I did  
2 not review and that she did related to SHEP.

3           MR. NORTMAN: Thank you.

4           MR. CHRETIEN: I'm going to pass the  
5 witness subject to redirect on my part if any  
6 of new matters come up during the examination  
7 by you folks.

8           MR. AIETA: Shall I go ahead?

9           MR. FIGEL: Sure.

10                   CROSS-EXAMINATION

11 BY MR. AIETA:

12           Q.     Good afternoon, Mr. Cangiano. My name  
13 is Mario Aieta from Satterlee Stephens Burke &  
14 Burke, and I'm representing defendant Wayne Wew.  
15 I just have a couple of questions for you.

16                   You testified during the course of your  
17 deposition yesterday and today that you did not  
18 do any investigation of your own in connection  
19 with your opinion, correct?

20           A.     That's correct. Other than, as I  
21 mentioned before, independent research on various  
22 websites, such as SEC.gov, FINRA.com -- dot org,  
23 I guess. I'm sorry. But no, I primarily relied  
24 on the SEC documents.

25           Q.     Okay. And the independent research

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1 that you did, Mr. Cangiano, did any of that  
2 relate to Wayne Wew?

3 A. It did not.

4 Q. Would it be fair to say, then, that  
5 there is nothing in your expert report that you  
6 claim is a fact about Wayne Wew that you  
7 established on your own?

8 A. That's correct.

9 Q. Mr. Cangiano, do you know what a day  
10 trader is?

11 A. I do.

12 Q. Would you tell me what a day trader is,  
13 please.

14 A. A day trader is somebody who utilizes,  
15 you know, advanced trading technology to trade  
16 for his own account. Usually doesn't hold  
17 positions overnight, but is in and out of stocks.

18 Q. And you would agree with me, would you  
19 not, there is nothing illegal in being a day  
20 trader, right?

21 A. No, not necessarily.

22 Q. Okay. You testified yesterday that --  
23 concerning a market maker called Nite. Do you  
24 remember that?

25 A. Yes.

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1 Q. You indicated that the bids that you  
2 were reviewing placed by Nite were not being made  
3 for the purpose of investment. Do you remember  
4 that?

5 A. Yes.

6 Q. You said that Nite traded securities,  
7 right?

8 A. That's correct.

9 Q. And as far as you -- it's not your  
10 opinion that there is something inherently wrong  
11 with that, is there?

12 A. That Nite trades securities?

13 Q. Right.

14 A. No.

15 Q. And you would agree with me there is  
16 nothing inherently wrong with somebody trading  
17 securities who was not a long-term investor,  
18 right?

19 A. That's correct.

20 Q. You also testified concerning trades  
21 made by short sellers?

22 A. Yes.

23 Q. At one point you stated that short  
24 sellers who were placing trades with respect to  
25 Sedona may have known what was going on. Do you

VIDEOTAPED DEPOSITION OF JAMES M. CANGIANO - VOLUME 3  
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1 remember that?

2 A. I think my testimony was I didn't know  
3 whether there was short selling going on in  
4 Sedona. I think that's what Mr. Figel asked.

5 Q. Okay. You -- in your opinion you rely  
6 on the fact that there was some short selling as  
7 an indicator of a pump and dump situation. Do  
8 you remember that?

9 A. In the general background, yes.

10 Q. And I think you testified yesterday  
11 that the presence of short sellers indicated to  
12 you, and I'll quote, "that some savvy traders  
13 knew what was going on." Do you remember saying  
14 that yesterday?

15 A. Yes.

16 Q. And when you said "knew what was going  
17 on," what did you mean?

18 A. I think my testimony was that these  
19 short sellers make a living out of identifying  
20 artificially inflated stocks and shorting them.

21 Q. Okay. Is that illegal?

22 A. No.

23 Q. Is there anything wrong with that, as  
24 far as you can tell?

25 A. No, providing they comply with all the

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1 short sale regulations with respect to market  
2 making and delivery of the securities.

3 Q. You would agree with me, would you not,  
4 Mr. Cangiano, there is also nothing wrong with a  
5 day trader who identifies activity in the stock  
6 by Sedona and purchases that stock in order to  
7 make some money on it, right?

8 A. Nothing wrong with that.

9 Q. Do you recall yesterday, early on in  
10 the day, you were asked to explain under what  
11 circumstances raising a bid one time might  
12 constitute manipulation of the stock? Do you  
13 remember that?

14 A. Yes.

15 Q. And do you remember testifying that  
16 raising a bid one time might constitute  
17 manipulating the price of a stock if it was done  
18 for the purposes of artificially influencing the  
19 market? Do you remember that?

20 A. Yes.

21 Q. Okay. And if raising a bid was not  
22 done for the purpose of artificially influencing  
23 the market, would it be manipulation?

24 A. If there was no manipulative intent  
25 involved and in a standalone context, probably

VIDEOTAPED DEPOSITION OF JAMES M. CANGIANO - VOLUME 3  
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1 not.

2 Q. You would agree with me, then, that it  
3 was the trader's intent that determined whether  
4 or not raising a bid is manipulative?

5 A. Yeah, trader's intent combined with the  
6 other facts surrounding that particular bid.

7 Q. Well, would those other facts have to  
8 be facts known to the trader who was placing that  
9 particular bid?

10 A. I would say if he knew of the  
11 circumstances that he was participating in a pump  
12 and dump scheme and preconditioning a market, I  
13 would say that's a no-no. But if he was just  
14 putting in a bid independent of that, that's  
15 fine.

16 Q. All right. Now, let me break that  
17 down. When you say known of the circumstances,  
18 if he knew of the circumstances. Are you trying  
19 to say that if he knows of the circumstances but  
20 is not participating in some sort of scheme,  
21 that's still a no-no, as you said?

22 A. No. What I'm saying is if he's not  
23 participating in a scheme and raises the bid, I  
24 don't see any issue with that.

25 Q. Okay. Even if he knows of the

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1 circumstances, for example, like the short  
2 sellers, that's not a problem, right?

3 A. That's right.

4 Q. And to participate in the scheme, would  
5 you agree with me that the person placing the bid  
6 would have to have reached some sort of overt  
7 agreement with somebody else?

8 A. I think what I say in my report is that  
9 what I call preconditioning of the market  
10 sometimes has that kind of activity, such as wash  
11 trades, matched orders, et cetera, and that is a  
12 prearrangement. I agree with you there.

13 Q. Absent a prearrangement, somebody  
14 placing a bid on a stock could not be  
15 manipulating the market, could he?

16 A. Again, not unless he was a participant  
17 in the pump and dump scheme and did it with the  
18 express intent of setting the opening price in  
19 the market.

20 MR. AIETA: I don't have any other  
21 questions.

22 THE WITNESS: Thank you.

23 MR. CHRETIEN: Who's up?  
24  
25

VIDEOTAPED DEPOSITION OF JAMES M. CANGIANO - VOLUME 3  
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1 MR. CHRETIEN: Thank you. Any further  
2 questions?

3 MR. NORTMAN: I just want to follow up  
4 on the request I made about getting copies of  
5 the drafts that were reviewed by the SEC  
6 staff attorneys.

7 MR. CHRETIEN: I've got that written  
8 down.

9 MR. NORTMAN: Okay. So you will let me  
10 know.

11 MR. CHRETIEN: All right. I will.  
12 That concludes the deposition.

13 THE VIDEOGRAPHER: This deposition is  
14 concluded at 3:01.

15 (Whereupon, deposition concluded.)  
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